

## SUMMARY OF TESTIMONY ON PROPOSED RULES

A public hearing on the Board's proposed rules was held on Tuesday, June 27, 2000. Notice of the public hearing was published in the major newspapers of the state and was given directly to many individuals and organizations interested in the Board's activities. Notice of the hearing and a copy of the proposed rules was also published on the Board's internet website. The deadline for receipt of written comments was August 15, 2000. Neutral Chair Peter T. Dawson presided at the public hearing with Employee Representative Gwendolyn Gatcomb and Employer Representative Karl Dornish present. Also present were Executive Director Marc Ayotte, Board Counsel Lisa Copenhaver and Hearings Reporter Roger Putnam.

Appearing and providing oral testimony on the proposed rules was James Carson, Secretary-Treasurer of the Teamsters Union Local 340. Written testimony was received from Howard Reben, General Counsel for the Teamsters Union Local 340 to supplement the oral testimony of Mr. Carson. In addition, written testimony was received in the form of a joint submission from the Maine AFL-CIO, the Public Employee Committee of the Maine AFL-CIO, the Professional Fire Fighters of Maine and AFSCME Council 93. Mr. Carson made suggestions regarding four specific aspects of the rules, including a suggestion that the Board impose a one-year waiting period following a decertification before another union could be certified. This particular suggestion was supported by the written testimony received from the Teamsters General Counsel and by the AFL-CIO.

Under current Board rules, an individual or an insurgent union may submit a petition to decertify the incumbent union and to certify another union in the same election. Consistent with the statute, a 30% showing of interest is required with such a petition and the contract bar rule applies. The Teamster's proposal is to prohibit a union from seeking certification at the same time the incumbent union is facing a decertification election and to require the insurgent union to wait one year before filing an election petition. The arguments presented by the Teamsters are that the current rule makes promotes "union shopping", allowing the insurgent union to gain a windfall of the benefits of the contract negotiated by the ousted union without any of the costs associated with negotiating a first contract. By requiring the employees to wait a year before certifying a new union, they argue, there would be no doubt that motivation of the employees was that they were truly not being served by the ousted union. The Teamsters also argue that labor stability would be promoted by this rule change by reducing the frequency of changes in representative. They also argue that if raiding is encouraged by Board policy, the quality of union representation may diminish as the funds necessary to obtain initial contracts may not be readily available. The Teamsters contend that the presence of some degree of chaos preceding a decertification/certification election often makes it difficult to conduct a fair election or sort out charges of impropriety, problems that would disappear if a one year hiatus were imposed.

The argument in support of this change presented by the AFL-CIO is that the current decertification and certification processes are not in the best interests of either employers or workers because it has a destabilizing effect on labor-management relations. The prospect of changing unions causes confusion and anxiety for both managers and workers. The AFL-CIO also argues that it is unfair to the original union to allow rapid certification of a new union

because the ousted union has usually invested considerable resources in organizing, bargaining and representing the unit. Both the Teamsters and the AFL-CIO noted that the unions of the AFL-CIO have addressed the raiding issue through constitutional provisions to prevent raiding but that the problem still exists because not all unions are part of the AFL-CIO.

Mr. Carson also presented three other suggestions to the Board in his testimony at the public hearing. The first issue concerns the date by which documents must be produced when the Board issues a subpoena. Mr. Carson argues that under the current rules when a subpoena duces tecum is issued, the party simply shows up at the hearing with the documents in hand. The other party must review those documents and adjust the presentation of his or her case accordingly in a very short period prior to the start of a hearing, often just 15 minutes. Mr. Carson suggests that requiring the documents to be produced two weeks prior to the hearing would allow for sufficient preparation.

Another suggestion made by Mr. Carson concerns the procedure for dismissing a case when there has been a determination that the complaint lacks merit. Mr. Carson suggests that there be some opportunity for oral argument before the Board before a case is dismissed for lack of merit.

The final issue addressed by Mr. Carson concerns the proposed procedure for a union to disclaim interest in continuing to represent a unit. The proposed rules would require a decertification election if any interested party objected to the union's petition to disclaim. Mr. Carson is concerned that an objection from one employee could force the union to go through a decertification election. Furthermore, there could be situations where the unit employees were unwilling to pay union dues or fair share fees but at the same time refused to vote to decertify the union. If there is no contract language requiring the payment of union dues or fair share fees, the union could be forced to represent the employees with no way out and no financial support for their services.